Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

In The Supreme Court of the United States

EUGENE WIDEMAN JR, et al.,
Petitioners,

v.

STATE OF COLORADO, et al.,
Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

---

BRIEF FOR PETITIONER

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QUESTIONS PRESENTED FOR REVIEW

1. **Whether the Rooker-Feldman Doctrine, applies to cases, wherein the Original State Trial Court acted without jurisdiction.**

2. **Whether an Extraordinary Circumstance exist that makes the Young Absentia Doctrine moot, when the State Trial Court acts without jurisdiction,**

3. **Whether the First Amendment precludes the dismissal of 42USC § 1983-1986, cases using the Rooker-Feldman or Young Doctrines, where A State and it's agencies are actively violating a persons civil rights.**

4. **Whether a Rooker-Feldman or the Young Doctrines are moot issues, where a State waives it's Eleventh Amendment rights by receiving Federal Funds.**

PARTIES TO THE PROCEEDINGS

Petitioner in case no. 07-1152 and 07-1154 is Eugene Wideman.

The Respondents in the Case are The State of Colorado, Colorado Child Enforcement Agency, Amelia Garcia, Cesar Chavez Academy and Pueblo County, Colorado. Respondents Cesar Chavez and Amelia Garcia did not file Appeals Briefs in this case.

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1. The Federal Court had enough de facto information the State Courts had violated the Petitioners 4th, 6th, and 14th Amendment, to take jurisdiction.

2. The appellant does not meet the criteria of being a loser in a State Case, because the State Trial Court acted without jurisdiction and his case was not heard under the proper statue.

A. Under the Rocker-Feldman Doctrines the Federal Courts assume that a State Case was adjudicated by a State Court with legal authority to do so, and their court orders are valid.

B. Under State of Colorado Statues Divorce Courts have no jurisdiction over paternity matters.

C. Under Colo. Rev. Statue 1400, titled Dissolution of Marriage does not apply to paternity cases.

4. The State of Colorado and it agencies have full knowledge the orders of the trial court they are currently using are invalid, and have failed to act to correct the situation. Therefore, the use of these orders cause a § 1983, claim.

A. Under 42USC § 1986, when a party with the power to correct a wrongful act, or refuses to act they are liable under § 1983.

B. The First Amendment precludes claims under § 1983 from being dismissed by way of the Rooker-Feldman or Young Doctrines.

5. By excepting Federal Funds to run it's Child Enforcement Agency, the State of Colorado waived it's right to Eleventh Amendment Immunity.

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Bell v. Hood 327 U.S. at 682.;
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Koslow v. Pennsylvania, 302 F.3d 161, 170 (3d Cir. 2002

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Carrington v. Rash, 380 U.S. 89, 96 (1965),

Opinions Below

The opinions of the 10th Circuit Appeals Court and the District Court are not recited below because no hearing was held and both court contend the Federal Courts Lack subject-matter jurisdiction the same reasons; based on the Rooker-Feldman Doctrine, and Young Absentia Doctrine.

Jurisdictional Statement

The Court has jurisdiction under 28 U.S.C. § 1254. The decision and order of the Appeals Court were entered on October 1, 2007. Petitioner did not request a rehearing in the Court of Appeals, due to not receiving a copy of the decision until October 20, 2007.

Relevant Constitutional And Statutory Provisions

First, Fourth, Sixth , and Fourteenth Amendments to the U.S. Constitution.

42USC § 19883, 85, &86;

Colo. Rev. Statue § 1400 ect,. Dissolution of Marriage

Colo. Rev. Statue § 1900 ect,. Uniform Parenting Act

42 U.S.C. § 666 (5) (A

42 U.S.C § 2000d-7.(a) (1)
42 U.S.C § 2000d-7.(a) (2)

Statement of the Case

The Appellant filed Appeal No. 07-1152 ; in connection with District Court Case No. 06-cv-01423-WDM-CBS), the district court dismissed the action with prejudice, prior to hearing based on the Rooker-Feldman and Young Doctrines. In the second action (Appeal No. 07-1154; District Court Case No. 06-cv-2363-WDM-MEH), the district court dismissed the action without prejudice, for the same reason.

The 10th Circuit Court of Appeals Affirmed the District Courts Decision, reciting the same bases.

The cases are related to the State of Colorado Case 97DR1028; Pueblo County Colorado. Wherein Mr. Wideman was alleged to be the father of CG-W a child born to Ms. Amelia Garcia. .

Summary of Argument

In the Complaints and Appeals filed by Mr. Wideman he made it no secret all his claims were related to his custody case despite the language of the Appeals Court calling his appeal a thinly veiled attempt to appeal that case.

Mr. Wideman's contends that the use of an invalid court order by the State of Colorado, and Colorado Department of Social Services, and others, to access his bank accounts, Federal Workers Compensation Disability, and personal Tax records is tantamount to illegal search and seizure, and the deprivation of his parental rights, Violated his 4th, 6th, and 14th Amendment Rights, and that the courts and their agents and the child's mother Ms. Garcia conspired to take his parental rights, so they could give her more child support, which amount to claims under § 1983,

He also contends that the Rooker-Feldman and Young Doctrines does not apply where the State Trial Court acted without authority and the Federal District Court had Subject-matter jurisdiction to stay any current State hearings based on the same invalid court orders.

In addition, since the State of Colorado Receives Federal Funds to run it's Child Enforcement Program, as well as other State programs it cannot claim Immunity under the Eleventh Amendment.

ARGUMENT

When cases 06-cv-01423-WDM-CBS, and . 06-cv-2363-WDM-MEH went before the District Court it should not have been dismissed as an attempted appeal of a State Case. The District Court should have first determined if the State Trial Court had proper legal jurisdiction to act.

The Supreme Court, has held in *Bell v. Hood* 327 U.S. at 682.; that if there was a question as to whether or not the allegations of a complaint stated a cause of action on which the Court could grant relief, and the claim of such a cause of action as in the Bell case, was for unlawful search and imprisonment, was not wholly insubstantial or frivolous, or immaterial and made for the sole purpose of obtaining jurisdiction, the district court should have "assume[d] jurisdiction to decide whether the allegations state[d] a cause of action on which the Court [could] grant relief .

Donohoe Const. Co., Inc.v. Montgomery Cty. Council, 567 F.2d 603 (4th Cir. 1977),

***Sunrise Corp., Myrtle Beach v. Myrtle Beach*, 420 F.3d 322 (4th Cir. 2005),**

In the complaints filed by Mr. Wideman it clearly spells out the lack of jurisdiction under Colorado Law by Divorce Courts in Paternity matters;

The jurisdiction of a divorce court is exercised as between a husband and wife; that of a juvenile court in dependency proceedings, as between the state in the interest of the child, and the parents of the child. Ross v. Ross, 89 Colo. 536, 5 P.2d 246 (1931); Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

Furthermore, Paternity matters are heard under Colorado Revised Statue (C.R. S) 1900ect,. titled the Uniform Parenting Act. Mr. Wideman's case was heard under C.R.S 1400ect., titled the Dissolution of Marriage; it has no provisions for hearing paternity matters. Nor does C. R. S. 1400, advise alleged fathers of their right with regards to genetic testing or it's time limits.

In addition, in 2004, when Mr. Wideman requested genetic testing, it was denied based on the number of attorneys he previously had. As a result of the State Trail Court's denial of his request for a genetic testing it further invalidated any order it wrote.

A trial court's determination of paternity in a dissolution of marriage action is invalid where, although requested to do so, it failed to follow any of the procedures outlined in the

uniform act. In re Burkey, 689 P.2d 726 (Colo. App. 1984)

Furthermore, when State Court forced Mr. Wideman forced to pay child support even though the court never properly identified him as the father of the child, they violated Federal Statues, as well as his Right to Due Process and 6th Amendment Right against illegal search.

Before a duty to support can be imposed, it must first be established that the person upon whom the support obligation is to be imposed is, in truth, the father of the child. In re People in Interest of D.R.B., 30 Colo. App. 603, 498 P.2d 1166 (1972), aff'd, 180 Colo. 439, 507 P.2d 468 (1973).

42 U.S.C. § 666 (5) (A) requires States to develop and use an affidavit for the voluntary acknowledgment of paternity.

Mr. Wideman has never signed any such document, because under the State law; C.R.S. 1400, ect, that governs Divorce Courts there are no such provisions, and any document that were signed was done so under false pretense, and the legal ramifications were never explained by the court or his attorneys.

Furthermore, when Mr. Wideman request for genetic testing and it was denied, the State Court violated 42 U.S.C. § 666 (5)(A).

42 U.S.C. § 666 (5)(A) establishes process available from birth until age 18. The Procedures which permit the establishment of the paternity of a child at any time before the child attains 18 years of age. As of August 16, 1984, clause (i) of that statue also applied to a child for whom paternity has not been established or for whom a paternity action was brought but dismissed because a statute of limitations of less than 18 years was then in effect in the State.

In addition, we believe, following Mr. Wideman's State Court Appeals he was Maliciously Prosecuted by the State Court,; his child support was tripled, and his parental rights were taken based on perjured affidavits from the child's mother Ms. Garcia charging him with crimes that were never adjudicated by the standard of law the United States Supreme Court s requires in civil cases of this type.

Santosky v. Kramer 455 U.S. 745 March 24, 1982; Today we hold that the Due Process Clause of the Fourteenth Amendment demands more than this. Before a State may sever completely and irrevocably the rights of parents in their natural child, due process

requires that the State support its allegations by at least clear and convincing evidence

Mr. Wideman appealed his case based on lack of jurisdiction by the State Trial Court and lack of identifying him as the father . The State Appeals Court denied Mr. Wideman's appeal " stating he had signed papers", what papers it did not specify, but it could not produce any affidavits signed by him.

The State Appeals Court also never addressed the issue of jurisdiction, and allowed the State Trial Court and the Department of Social Services to continue using the invalid court orders in violation of Mr. Wideman's 4th and 6th and 14th Amendment Rights.

We also contend that since there is no case law or statues that cover the particulars in a case such as Mr. Wideman's, the First Amendment to the Constitution negate the use of the Rooker-Feldman or Young Doctrines; The First Amendment guarantees "the right of the people . . . to petition the Government for a redress of grievances.

Using an invalid State Court Order also creates an Extraordinary Circumstance that gave the District Court discretion to take jurisdiction over this matter; (citation omitted),

Seneca-Cayuga Tribe of Okla. v. Okla. ex rel. Thompson, 874 F.2d 709, 711 (10th Cir. 1989),

Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432 (1982)).

The use of the Divorce Court Statue to deprive Mr. Wideman of his constitutional Rights by the State Courts, Department of Social Services, and all other parties that benefitted from the invalid court orders, also gave rise to his claims under 42 U.S.C. § 1983, 85 & 1986.

42 U.S.C. § 1983; Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a

reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982

42 U.S.C. § 1983. To state a § 1983 claim, you must establish (a) deprivation of a right secured under the Constitution or federal law; and (b) that deprivation was caused by a person acting under color of state law. Brock v. McWherter, 94 F.3d 242, 244 (6th Cir. 1996).

42 U.S.C. § 1985; Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented.

42 U.S.C. § 1986, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery

of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. § 1988. (a) Applicability of statutory and common law the jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States.

Lastly we contend that the State of Colorado cannot claim immunity or Federal Courts use the Rooker-Feldman or Young Doctrines in this matter because the State waived it's rights to be sued by receiving Federal Funds. By virtue of that waiver it also gave jurisdiction to Federal Courts to interceded in Custody Case where Civil Rights violations are or have been committed by the State and it's agencies.

42 U.S.C § 2000d-7.(a) (1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], title IX of the Education Amendments of 1972 [20 U.S.C. 1681

et seq.], the Age Discrimination Act of 1975 [42 U.S.C.6101 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C.2000d et seq.], or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.

42 U.S.C § 2000d-7.(a) (2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State.

Doe v. Nebraska, No. 99-1024 (8th Cir. Apr. 17, 2001). Jim C. v. United States, 235 F.3d 1079 (8th Cir. 2000) (en banc), cert. denied, 533 U.S. 949 (2001).: (exact quote omitted) District Court holding, inter alia, that the defendants had waived their sovereign immunity, pursuant to the waiver provision of § 504, 42 U.S.C. § 2000d-7, by accepting federal funds for their foster care and adoption programs.

Under the Rehabilitation Act, states that accept federal funds are required by statute to waive their Eleventh Amendment immunity to § 504 claims. 42 U.S.C.§ 2000d-7 ("A State shall not be immune under the Eleventh Amendment of the Constitution of the United

States from suit in Federal court for a violation of section 504 of the Rehabilitation Act . . . or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance."); see Jim C.,235 F.3d at 1081; Koslow v. Pennsylvania, 302 F.3d 161, 170 (3d Cir. 2002

CONCLUSION

First, I want to say that Im not an attorney and Im not trying to act like one, so my thoughts and arguments my not be organized in proper legal form. However, my rights were trampled and as a United States Citizen, instead of resorting to violence as most men are force to in these situation, I want this court and others to send a message to all men that take care of their fatherly duties.

That no State Court can take your child, your Constitutional Rights, and your money and just disregard you as a human being.

State Custody Cases involve more than just a court issuing visitation and child support orders. Under the new catch phrase of " Acting in the best interest of a child". The courts are allowed to trample the constitution, and deprive a parents of his rights and rob them of time with their child, based on frivolous accusation by one parent, which in most cases is the mother.

The courts in violation of the father's 1st, 4th, and 14th Amendment Rights, are allowed to trample your personal, social, and religious beliefs, and when you don't conform to what they want, as in this case, they just allow the other party file one frivolous motion after another with absurd allegations that are never proven. However, unlike most other cases the

State Court in this matter acted without jurisdiction, so every order it wrote was invalid.

I (Mr. Wideman) outline in my complaint the State Trial Court lack of jurisdiction, that alone was enough to bring this matter into the jurisdiction of a Federal Court. However, when you add the fact the State of Colorado and other have waived their rights by receiving money to run their Child Enforcement Agencies, the violation of Federal Law puts the Federal District Courts in the middle of the child custody business.

This Court has ruled in several cases that I believe give the Federal District Courts jurisdiction;

To give a mandatory preference to members of either sex over members of the other, merely to accomplish the elimination of hearings on the merits, is to make the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause of the Fourteenth Amendment." Carrington v. Rash, 380 U.S. 89, 96 (1965),

Women are given priority over men in to days custody cases. The woman is viewed as a victim and the man a perpetrator and thus when issues go before the State Courts, as in this case the courts are hearing these cases based on a Preponderance of Evidence, and

not Clear and Convincing Evidence. This allows the women or men to take the opposing party through an endless morass of court appearances that end in one parent (the accused) losing their parental rights unjustly to avoid more hear.

When suites are filed in the Federal District Court, the courts hide behind the Rooker-Feldman or Young Doctrines. However, I believe 42 U.S.C § 2000d-7.(a) (1) and 42 U.S.C § 2000d-7.(a) (2) renders Rooker-Feldman or Young Doctrines moot and the "Federal Court have an obligation to make sure State Courts are not violating parental and personal rights protected by the 14th Amendment.

Santosky v. Kramer 455 U.S. 745 March 24, 1982 ; Today we hold that the Due Process Clause of the Fourteenth Amendment demands more than this. Before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence.

Federal District are not ask to be child custody courts, but to act in the same manner they would if these were criminal convictions and make sure the State Courts are not violating a parent civil rights, Constitutional Laws or Federal Statues and to examine the merits of a case and not just dismiss it at the initial phases based on Rooker-Feldman or Young.

Document prepared and submitted by:

_____ _____

Eugene Wideman, Jr. **Date**
Pro Se Litigant

ATTACHMENTS

1. **Order and Judgment of 10th Circuit Court of Appeals, dated October 1, 2007**

2. **Amended Judgment and Orders of the Federal District Court Colorado; Date November 1, 2007.**

3. **Judgment and Recommendation of the District Court of Colorado, dated March 8, 2007 and March 19, 2007**

4. **Order on Recommendation of the Magistrate Judge; dated March 8, 2007 and March 19, 2007**

9 United States Court of Appeals
Tenth Circuit
October 1, 2007

Elisabeth A. Shumaker Clerk of Court

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

EUGENE WIDEMAN, JR.,
Plaintiff-Appellant,
v.
STATE OF COLORADO, FAMILY ENFORCEMENT SERVICES, and PUEBLO COUNTY, COLORADO,
Defendants-Appellants.No. 07-1152
(D.C. No. 06-cv-01423-WDM-CBS)
(D. Colo.)

EUGENE WIDEMAN, JR.,
Plaintiff-Appellant,
v.
AMELIA GARCIA, PUEBLO COUNTY, COLORADO, and CESAR CHAVEZ ACADEMY,
Defendants-Appellants.No. 07-1154
(D.C. No. 06-cv-2363-WDM-MEH)
(D. Colo.)

ORDER AND JUDGMENT**

This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Before BRISCOE, McKAY, and McCONNELL, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of these appeals. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The cases are, therefore, ordered submitted without oral argument.

Plaintiff Eugene Wideman, Jr., appearing pro se, appeals from the district court's dismissal for lack of subject matter jurisdiction of two Â§ 1983 actions that he filed. We exercise jurisdiction over these appeals pursuant to 28 U.S.C. Â§ 1291. In Appeal No. 07-1152, we affirm the district court's dismissal of the action, but remand with directions to modify the judgment to indicate the dismissal is without prejudice. In Appeal No. 07-1154, we affirm in part, reverse in part, and remand for further proceedings.

Mr. Wideman and defendant Amelia Garcia are the parents of a minor child, referred to by Wideman in his pleadings as "CG-W." According to the allegations in Wideman's two complaints, he and Garcia have had a long-running battle in Colorado state court over the care and custody of CG-W. In his two Â§ 1983 complaints, Wideman asserted a host of complaints regarding the Colorado state courts' resolution of this dispute. For example, Wideman alleged that the state trial court lacked jurisdiction over he and Garcia because they had never been married, altered his parental rights on the basis of insufficient and/or false evidence, and was biased against him because of his gender and race. Wideman further complained that he had attempted to bring these matters to the attention of the Colorado Court of Appeals (CCA), but that the CCA rejected his claims and "treated him with the same disrespect that [the] lower court did." ROA, No. 07-1152, Vol. I, Doc. 1 at 5. Wideman's two Â§ 1983 complaints sought damages against the various defendants named therein, and also requested relief in the form of an order restoring his parental rights and directing that all child support payments he had made to Garcia be returned to him.

The district court, ruling on motions filed by defendants and at the recommendation of the magistrate judge, dismissed both actions for lack of subject

matter jurisdiction.
In the first action (Appeal No. 07-1152; District Court Case No. 06-cv-01423-WDM-CBS), the district court dismissed the action with prejudice.

In the second action (Appeal No. 07-1154; District Court Case No. 06-cv-2363-WDM-MEH), the district court dismissed the action without prejudice. Wideman now appeals those rulings. We review de novo the dismissal of a complaint for lack of subject matterjurisdiction. Guttman v. Khalsa, 446 F.3d 1027, 1031 (10th Cir. 2006).

"We may affirm the district court's dismissal on any basis supported by the record and the law." Weaver
v. United States, 98 F.3d 518, 519 (10th Cir. 1996).
After reviewing the records on appeal, we conclude that most of the claims asserted in Wideman's two complaints are subject to dismissal for lack of subject matter jurisdiction under the Rooker-Feldman doctrine.

See Dist. of Columbia Ct. of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923).
That doctrine "prevents the lower federal courts from exercising jurisdiction over cases brought by state-court losers challenging state-court judgments rendered before the

district court proceedings commenced." Lance v. Dennis, 546 U.S. 459, 460 (2006) (percuriam; internal quotations omitted).

It also bars any "action in federal court that alleges an injury 'inextricably intertwined' with a state court decision, such that success in the federal court would require overturning the state court decision . ." Epps v. Creditnet, Inc., 320 F.3d 756, 758-59 (7th Cir. 2003) (collecting cases).

In this case, it is apparent that the majority of Wideman's claims are little more than thinly disguised efforts to overturn, or at least call into question the validity of, the rulings entered against him by the Colorado state courts. Therefore, those claims are subject to dismissal for lack of subject matter jurisdiction under the Rooker-Feldman doctrine.

We further conclude that, to the extent Wideman's complaints assert claims that involve matters still pending in Colorado state court, those claims are subject to dismissal pursuant to the Younger abstention doctrine.' See Younger v. Harris, 401 U.S. 37 (1971).

That doctrine "requires a federal court to abstain from hearing a case where . (1) state' For example, Wideman alleges that the Colorado state courts have, to date, failed to require paternity testing to be performed, and,

in his second claim for relief in the complaint that underlies Appeal No. 07-1152, asks "[t]hat any Paternity test required at this point be under the supervision of the Federal Courts because of the parties involved in this matter on the State level cannot be trusted with any testing." ROA, Appeal No. 07-1152, Vol. I, Doc. 1 at 7.4
judicial proceedings are ongoing; (2) [that] implicate an important state interest; and (3) the state proceedings offer an adequate opportunity to litigate federal constitutional issues." Winnebago Tribe of Neb. v. Stovall, 341 F.3d 1202, 1204 (10th Cir. 2003).

Those requirements are clearly satisfied here. To begin with, Wideman asserts that the custody proceedings in Colorado state court remain ongoing. Further, it is beyond dispute that such proceedings implicate important state interests. See Hunt v.
Lamb, 427F.3d 725, 727 (10th Cir. 2005) ("It is well-established that federal courts lack jurisdiction over the whole subject of the domestic relations of husband and wife, and parent and
child.").

Lastly, it is clear that the Colorado state court proceedings offer Wideman an adequate opportunity to litigate any federal constitutional issues that may arise; indeed, Wideman concedes in his pleadings that he has previously raised such issues in

the Colorado state proceedings.

The only claim in either complaint that does not readily fall into one of the two categories discussed above is Wideman's claim, asserted in Appeal No. 07-1154 (District Court Case No. 06-cv-2363-WDM-MEH) that defendant Cesar Chavez Academy, a public charter school in Pueblo, Colorado, violated his constitutional rights by denying him equal access to CG-W's school records. ROA, Appeal No. 07-1154, Vol. I, Doc. 1 at 5. There is no indication in the record that this claim is part of the underlying state court proceedings and, on its face, this claim appears to involve a matter of federal law that the district court is empowered to review under the federal question statute, 28 U.S.C. Â§ 1331. Thus, we reverse the district court's dismissal of this claim and remand to the district court for further proceedings on this claim.

As a final matter, we conclude it is necessary to remand Appeal No. 07-1152 (District Court Case No. 06-cv-01423-WDM-CBS) in order to allow the district court to modify the dismissal to be without prejudice. Because dismissals based upon the Rooker-Feldman and Younger abstention doctrines are jurisdictional, they should be entered

without prejudice. Brereton v. Bountiful City Corp., 434 F.3d 1213, 1214 (10th Cir.2006)

("A longstanding line of cases from this circuit holds that where the district court dismisses an action for lack of jurisdiction, as it did here, the dismissal must be without prejudice.").

In Appeal No. 07-1152 (District Court Case No. 06-cv-01423-WDM-CBS), we AFFIRM the district court's dismissal of the action, but REMAND the case to the district court with directions to modify the judgment to indicate the dismissal is without prejudice. In Appeal No. 07-1154 (District Court Case No. 06-cv-2363-WDM-MEH),

The magistrate judge and district court, in addressing the Academy's motion to dismiss, noted that Wideman had failed to effect proper service of his complaint on Academy. Although the magistrate judge noted that "courts [generally] allow a plaintiff the opportunity to cure defects in service of process, rather than dismissing the complaint," he concluded that such relief
was not appropriate here because, in his view, the district court lacked subject matter jurisdiction over the entire action. ROA, Appeal No. 07-1154, Vol. I, Doc. 13 at 4. In turn, the district court likewise dismissed the entire action for lack of subject matter jurisdiction.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Walker D. Miller

Civil Action No. 06-cv-02363-WDM

EUGENE WIDEMAN, JR.,
Plaintiff,

v.

AMELIA GARCIA, et al.,

Defendants

ORDER

In accordance with the October 23, 2007 mandate of the United States Court of Appeals, it is now ordered that the clerk of the Court amend its judgment to dismiss this case without prejudice.

DATED at Denver, Colorado, on November 1, 2007. BY THE COURT: s/ Walker D. Miller
United States District Judge
DATED at Denver, Colorado, this 1st day of November, 2007.

FOR THE COURT: GREGORY C. LANGHAM, CLERK By: s/ Edward P. Butler Edward P. Butler Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

JUDGE WALKER D. MILLER
Civil Action No. 06-cv-01423-WDM-CBS

EUGENE WIDEMAN, JR.,
Plaintiff(s),
v.
STATE OF COLORADO, FAMILY ENFORCEMENT AGENCY, and PUEBLO COUNTY, COLORADO,
Defendant(s).

AMENDED JUDGMENT

Pursuant to and in accordance with the Order on Recommendation of Magistrate Judge entered on March 8, 2007, by Judge Walker D. Miller, which is incorporated herein by reference as if fully set forth, it is ORDERED that the recommendation of Magistrate Judge Craig B. Shaffer, issued January 2, 2007 is accepted.

It is FURTHER ORDERED that defendant's Motion to Dismiss for Lack of Jurisdiction, filed August 30, 2006 and defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction, filed September 25, 2006 are granted.

It is FURTHER ORDERED that judgment shall

enter in favor of the defendants and against the plaintiff. Pursuant to and in accordance with the Order entered on November 1, 2007 by Judge Walker D. Miller, which is incorporated herein by reference as if fully set forth, it is FURTHER ORDERED that the complaint and cause of action are dismissed without prejudice.

FURTHER ORDERED that judgment shall enter in favor of the Defendants and against the Plaintiff.

Pursuant to and in accordance with the Order entered on November 1, 2007, by Judge Walker D. Miller, which is incorporated herein by reference as if fully set forth, it is

FURTHER ORDERED that the complaint and cause of action are dismissed without prejudice.

DATED at Denver, Colorado, this 1st day of November, 2007.
FOR THE COURT:
GREGORY C. LANGHAM, CLERK
By: s/ Edward P. Butler Edward P. Butler
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

JUDGE WALKER D. MILLER

Civil Action No. 06-cv-02363-WDM-MEH

EUGENE WIDEMAN, JR.,
Plaintiff(s),
v.
AMELIA GARCIA,
PUEBLO COUNTY, COLORADO, CEASAR CHAVEZ ACADEMY,
Defendant(s).

AMENDED JUDGMENT

Pursuant to and in accordance with the Order entered on March 19, 2007, by Judge Walker D. Miller, which is incorporated herein by reference as if fully set forth, it is ORDERED that the Report and Recommendation of Magistrate Judge Michael E. Hegarty, issued February 7, 2007 is accepted.

It is FURTHER ORDERED that the Motion to Dismiss Complaint Against Defendant Cesar Chavez Academy, filed December 15, 2006 is granted in part and denied in part. The claims against Defendant Cesar Chavez Academy are dismissed without prejudice.

It is FURTHER ORDERED that Pueblo County's Motion to Dismiss and for Award of Attorney's Fees filed December 27, 2006 is granted in part and denied in part. The claims against Defendant Pueblo County are dismissed without prejudice. Pueblo County's request for attorneys' fees is denied. It is

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Judge Walker D. Miller

Civil Action No. 06-cv-01423-WDM-CBS

EUGENE WIDEMAN JR.
Plaintiff(s),
v.
STATE OF COLORADO, FAMILY ENFORCEMENT AGENCY PUEBLO COUNTY, COLORADO,
Defendant(s).

ORDER In accordance with the October 23, 2007 mandate of the United States Court of Appeals, it is now ordered that the Clerk of the Court amend its judgment to dismiss this case without prejudice.

DATED at Denver, Colorado on November 1, 2007

BY THE COURT: s/ Walker D. Miller
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO JUDGE WALKER D. MILLER

Civil Action No. 06-cv-2363-WDM-MEH

EUGENE WIDEMAN, JR.
Plaintiff,
v.
AMELIA GARCIA; PUEBLO COUNTY, COLORADO; and CESAR CHAVEZ ACADEMY
Defendants.

ORDER ON RECOMMENDATION OF MAGISTRATE JUDGE Miller, J.

This matter is before me on the recommendation of Magistrate Judge Michael E.Hegarty (doc no 13), isssued February 7, 2007, that Plaintiffs complaint be dismissed for lack of jurisdiction.

Plaintiff filed a timely objection to the recommendation. 28 U.S.C. § 636(b). I have reviewed de novo the pertinent portions of the record in this case,

including
the Complaint, the motions to dismiss filed by Defendants Cesar Chavez Academy and Pueblo County, the recommendation. and Plaintiff's objections.
For the reasons that follow, I accept the recommendation. The allegations in Plaintiff's Complaint revolve around certain events in connection with child care and custody disputes between Plaintiff and Ms. Garcia, the mother of Plaintiffs child.

Plaintiffs primary claim is that he has wrongfully been deprived of parenting time with his child by Ms. Garcia.

In addition, he alleges that individuals at Cesar Chavez Academy conspired with Ms. Garcia in depriving Plaintiff of his 14th Amendment rights by providing false statements in aid of a restraining order against Plaintiff. Plaintiff further alleges that the Pueblo County judge handling the custody issues is biased against him and that the court made errors in the issuance of the restraining order.

Magistrate Judge Hegarty recommended dismissal of the case because Plaintiff has failed to properly obtain service on Cesar Chavez Academy. In addition, Magistrate Judge Hegarty recommends dismissal because the claims are directly related to orders entered by the state court.

Pursuant to the Rooker-Feldman doctrine, a federal action based on alleged constitutional violations is precluded if the relief requested in the federal action would effectively reverse some action or decision by the state court, or would effectively void its ruling. Rooker v. Fid. Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Tal v. Hogan, 453 F.3d 1244, 1256 (10th Cir. 2006) (the Rooker-Feldman doctrine prevents "a party losing in state court ... from seeking what in substance would be appellate review of [a] state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights.") (quotation

omitted).

In the alternative, Magistrate Judge Hegarty recommends that the Court abstain from exercising jurisdiction pursuant to Younger v. Harris, 401 U.S. 37 (1971), which requires federal courts to avoid interfering with ongoing state criminal, civil, or administrative proceedings provided certain conditions are met.
The docket does not reflect that proper service was ever effected on Defendant Cesar Chavez Academy. Moreover, I agree with Magistrate Judge Hegarty that the substance of Plaintiff's claims concerns state court proceedings. which justifies dismissal of Plaintiffs complaint.
To the extent that Plaintiff seeks to overturn a final judgment of the state court (Ie., to appeal that judgment), such claims are barred by the Rooker-Feldman doctrine. The U.S. Supreme Court has recently made clear that the federal jurisdiction is not barred by the Rooker-Feldman doctrine if the federal action "was filed before the end of the state courts' appeal

process." See Guttman v. Khalsa, 446 F.3d 1027. 1031-32 (10th Cir. 2006) (discussing Exxon Mobil Corp v. Saudi Basic Indus. Corp., 544 U.S. 280 {2005}}. It appears from the face of the complaint that the some proceedings may be final (Lc .◦ the restraining order), while others may be considered ongoing. such as Plaintiff's child custody case.
However, as I noted in my order dismissing a parallel case filed by Plaintiff
(Case No. 06-cv-01423-WDM-CBS), even if the state courts retain jurisdiction over Plaintiff's child until she becomes an adult, this does not preclude the application of the Rooker-Feldman doctrine to claims based on final orders on custody and parenting time entered by the state court.

In addition. I agree with Magistrate Judge Hegarty that, to the extent Plaintiff's claims are based on state court proceedings that are not yet final. they are precluded by the Younger abstention doctrine. Magistrate Judge Hegarty correctly applied the proper

factors to consider in determining whether abstention is required. See also Chapman v. Okla., 472 F.3d 747 (10th Cir. 2006) (finding that Younger conditions were met in case where non-custodial parent alleged constitutional violations in state family court system).

In his objections, Plaintiff first argues that Cesar Chavez Academy has interfered with service or process. However. Plaintiff provides no evidence of this. Accordingly. I overrule this objection.

Plaintiff next argues that Pueblo County failed to properly serve a copy of its Motion to Dismiss on Plaintiff. However, I note that the certificate of service on Pueblo County's motion indicates that it was served on Plaintiff by mail, which is a valid method for service of a motion pursuant to Fed. R. Civ. P. 5. This objection is also overruled.

The remainder of Plaintiffs objections are directed at the determination that the issues in the complaint concern

matters of family law which are or were the subject of state court proceedings. However, the allegations contained in Plaintiffs objections, including the history of his relationship with Ms. Garcia, the circumstances of the conception of their child, and conclusory allegations of conspiracy at the trial court. do not persuade me otherwise. Plaintiff has attached the order of the state family court, issued January 23, 2007, concerning custody and parenting time. and then explains why he objects to each portion of that order. Plaintiff's objections can be adequately addressed in the state forum and. therefore, Younger abstention is required.

I also accept Magistrate Hegarty's recommendation that the defendants' requests for attorneys' fees be denied.

Accordingly, it is ordered:
1. The recommendation of Magistrate Judge Hegarty, issued February 7, 2007, is accepted.

2. The Motion to Dismiss Complaint

Against Defendant Cesar Chavez Academy (doc no 7) is granted in part and denied in part. The claims against Defendant Cesar Chavez Academy are dismissed without prejudice. Cesar Chavez Academy's request for attorneys' fees is denied.

3. Pueblo County's Motion to Dismiss and for Award of Attorney's Fees (doc no 10) is granted in part and denied in part. The claims against Defendant Pueblo County are dismissed without prejudice. Pueblo County's request for attorneys' fees is denied.

4. Plaintiff's complaint is dismissed for lack of jurisdiction.

DATED at Denver, Colorado, on March 19,2007.

BY THE COURT:
s/ Walker D. Miller
United states District Judge

IN THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF COLORADO
JUDGE WALKER D. MILLER

Civil Action No. 06-cv-001423-WDM-CBS

EUGENE WIDEMAN, JR.,
Plaintiff,
v.
STATE OF COLORADO, FAMILY
ENFORCEMENT AGENCY,
and PUEBLO COUNTY, COLORADO,
Defendants.

ORDER ON RECOMMENDATION
OF MAGISTRATE JUDGE Miller, J.

This matter is before me on the recommendation of Magistrate Judge Craig B. Shaffer, issued January 2, 2007, (doc. no. 21) that Defendant Pueblo County's Motion to Dismiss for Lack of Jurisdiction (doc. no. 7), and Defendant State of Colorado's Motion to Dismiss for Lack of Subject Matter Jurisdiction (doc. no. 12) be Granted. and Plaintiffs Motion for Temporary Restraining Order (doc. no. 18) be Denied.

Plaintiff filed a timely objection to the recommendation. 28 U.S.C. § 636(b). I, have reviewed de novo the pertinent portions of the record in this case, including the Complaint, the three motions at issue and the recommendation. Magistrate Judge Shaffer found that this court lacks jurisdiction over Plaintiff's complaint because of the prohibitions of the Rooker-Feldman doctrine which holds that federal courts may not hear claims actually decided or inextricably intertwined with those which were decided by a state court.

Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S. Ct. 149 (1923). District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S.Ct. 1303 (1983). Plaintiff argues that Rooker-Feldman does not apply to this case because his case in state court is ongoing. Specifically, he states that a restraining order was entered against him and proceedings on a request to terminate his parental rights are continuing. This new information disclosed in Plaintiffs objection is in contrast to the

facts at the time Defendants' motions were considered. Magistrate Judge Shaffer reviewed the state court proceedings in relation to issues surrounding whether Plaintiff was the biological father of the child in question. Plaintiff's two appeals to the Colorado Court of Appeals and his petitions to the Colorado Supreme Court for a writ of certiorari are discussed in the recommendation, as is his petition to the United States Supreme Court. The recommendation also notes that Plaintiff stated that the "highest state court ... has refused to address the issues presented" in his complaint. (Pla.'s resp. to State's mtn. at p.1).

The Magistrate Judge also reviewed the relief sought in Plaintiffs complaint, as is appropriate in determining the possible application of the Rooker-Feldman doctrine. The recommendation recounts that the complaint alleges that Plaintiffs federal due process and equal protection rights were violated by state court judgments regarding paternity, child custody, visitation and support. Those are the

judgments that he appealed in state court and for which he seeks relief in his complaint in this court. His complaint does not seek relief for damages having to do with restraining or termination of parental rights orders which may have been entered at a later point.

The situation in this case is similar to that in Bear v. Patton, 451 F .3d 639 (10th Cir. 2006). In that case, the Tenth Circuit considered the new requirement added by the U.S. Supreme Court in Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 125 S.Ct. 1517 (2005) that Rooker-Feldman only apply to state court proceedings that are final. The Tenth Circuit panel noted that the state court case in Bear was not actually complete because some accounting procedures remained to be performed. Nevertheless, the court found that because a final judgment had been entered on the count of the complaint that caused the accounting to be necessary, that piece being final was enough to invoke the reasoning behind the Rooker-Feldman doctrine.

It stated that the first reason was to prevent state court litigants "from circumventing the appellate structure established by 28 U.S.C. § 1257(a)." Bear, 451 F.3d at 642.

The court in Bear went on to cite language directly from Rooker that an "aggrieved litigant cannot be permitted to do indirectly what he can no longer do directly." Rooker, 263 U.S. at 416. As noted in the recommendation, the purpose of the finality requirement is to avoid having the federal court perform what would in essence be appellate review of final state court proceedings. The second reason the Bear court found that the finality was sufficient was because the remaining matter in that complaint was inextricably intertwined with the piece which was final. Under those circumstances, the Tenth Circuit remanded the case for a determination as to whether the judgment on the first count was final under the state law applicable to it.

In the present case, the result of such an examination is already clear. As

discussed by Magistrate Judge Shaffer, Plaintiff has already appealed the state court orders regarding paternity, custody, visitation and support. Clearly those orders were final, despite the fact that the state court will retain jurisdiction over the case until the child at issue becomes an adult. Consequently, the fact that there continue to be proceedings in the state court with regard to issues such as support or parental rights, does not preclude the application of the Rooker-Feldman doctrine.

Ultimately Plaintiffs challenge to the finality requirement must be seen as an attempt to avoid the heart of the issue. "To determine whether Rooker-Feldman deprives a federal court of jurisdiction, we ask whether the state-court judgment caused, actually and proximately, the injury for which the federal-court plaintiff seeks redress[. t]hat is ... whether the injury alleged by the federal plaintiff resulted from the state court judgment itself or is distinct from that judgment." Guttman v. Khalsa, 401 F.3d 1170, 1174 (10th Cir. 2005)

(citations omitted). It is clear that the injuries alleged in Plaintiff's complaint resulted from the judgments of the state court. Consequently, this court lacks jurisdiction over Plaintiffs complaint. Finally I note that Plaintiff argues in his objection that, contrary to the statement on page nine of the recommendation, he does challenge the constitutionality of "Colorado State Statue [sic] 1400 [sic] Dissolution of Marriage." In fact, Plaintiff's complaint does not challenge the constitutionality of the Uniform Dissolution of Marriage Act, C.R.S. §§ 14-10–101 et. seq. Rather the complaint argues that the Act should not have been applied to his circumstances as he was never married to the child's mother. In the absence of a challenge to the validity of the Act, Plaintiff cannot succeed with this argument.

Accordingly, it is ordered:

1. The Recommendation of Magistrate Judge Shaffer, issued January 2,2007,
(doc. no. 21) is Accepted.

2. Defendant's Motion to Dismiss

for Lack of Jurisdiction (doc. no. 7) is Granted.

3. Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction (doc. no. 12) is Granted.

4. Plaintiff's Motion for Temporary Restraining Order (doc. no. 18) is Denied.

5. Plaintiff's complaint is dismissed with prejudice.

DATED at Denver, Colorado, on March 8, 2007.

BY THE COURT: s/ Walker D. Miller United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

JUDGE WALKER D. MILLER

Civil Action No. 06-cv-02363-WDM-MEH

EUGENE WIDEMAN, JR.,
Plaintiff(s),
v.
AMELIA GARCIA,
PUEBLO COUNTY, COLORADO, CEASAR CHAVEZ ACADEMY,
Defendant(s).

AMENDED JUDGMENT

Pursuant to and in accordance with the Order entered on March 19, 2007, by Judge Walker D. Miller, which is incorporated herein by reference as if fully set forth, it is ORDERED that the Report and Recommendation of Magistrate Judge Michael E. Hegarty, issued February 7, 2007 is accepted.

It is FURTHER ORDERED that the Motion to Dismiss Complaint Against Defendant Cesar Chavez Academy, filed December 15, 2006 is granted in part and denied in part. The claims against Defendant Cesar Chavez Academy are dismissed without prejudice.

It is FURTHER ORDERED that judgment shall enter in favor of the defendants and against the plaintiff. Pursuant to and in accordance with the Order entered on November 1, 2007 by Judge Walker D. Miller, which is incorporated herein by reference as if fully set forth, it is FURTHER ORDERED that the complaint and cause of action are dismissed without prejudice.

FURTHER ORDERED that judgment shall enter in favor of the Defendants and against the Plaintiff.

Pursuant to and in accordance with the Order entered on November 1, 2007, by Judge Walker D. Miller, which is incorporated herein by reference as if fully set forth, it is

FURTHER ORDERED that the complaint and cause of action are dismissed without prejudice.

DATED at Denver, Colorado, this 1st day of November, 2007.
FOR THE COURT:
GREGORY C. LANGHAM, CLERK
By: s/ Edward P. Butler Edward P. Butler
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Judge Walker D. Miller

Civil Action No. 06-cv-01423-WDM-CBS

EUGENE WIDEMAN JR.
Plaintiff(s),
v.
STATE OF COLORADO, FAMILY ENFORCEMENT AGENCY PUEBLO COUNTY, COLORADO,
Defendant(s).

ORDER In accordance with the October 23, 2007 mandate of the United States Court of Appeals, it is now ordered that the Clerk of the Court amend its judgment to dismiss this case without prejudice.

DATED at Denver, Colorado on November 1, 2007

BY THE COURT: s/ Walker D. Miller
United States District Judge

It is FURTHER ORDERED that Pueblo County's Motion to Dismiss and for Award of Attorney's Fees filed December 27, 2006 is granted in part and denied in part. The claims against Defendant Pueblo County are dismissed without prejudice. Pueblo County's request for attorneys' fees is denied. It is

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO
JUDGE WALKER D. MILLER .

Civil Action No. 06-cv-02363-WDM-MEH

EUGENE WIDEMAN, JR.,
Plaintiff(s),
v.
AMELIA GARCIA,
PUEBLO COUNTY, COLORADO, CEASAR CHAVEZ ACADEMY.
Defendant(s).

JUDGMENT

Pursuant to and in accordance with the Order entered on March 19, 2007, by Judge Walker D. Miller, which is incorporated herein by reference as jf fully set forth, it is ORDERED that the Report and Recommendation of Magistrate Judge Michael E. Hegarty, issued February 7.2007 is accepted.

It is FURTHER ORDERED that the Motion to Dismiss Complaint Against Defendant Cesar Chavez Academy, filed December 15, 2006 is granted in part and denied in part.

The claims against Defendant Cesar Chavez Academy are dismissed without prejudice.

It is FURTI-IER ORDERED that Pueblo County's f'v1otion to Dismiss and for Award of

Attorney's Fees (doc no 10) is granted in part and denied in part. The claims against Defendant Pueblo County are dismissed without prejudice. Pueblo County's request for attorneys' fees Is denied.

It is FURTHER ORDERED that judgment shall enter in favor of the Defendants and against the Plaintiff.

It is FURTHER ORDERED that the complaint and cause of action are dismissed for lack of jurisdiction.

DATED at Denver, Colorado,
this 19th day of March. 2007.
FOR THE COURT:
GREGORY C. LANGHAM, CLERK
s/Stephen P. Ehrlich
By: Stephen P. Ehrlich Chief Deputy Clerk